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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd November 2006

No. 9633-li/1(SS)-22/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th August 2006 in I. D. Case No. 18/2004 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial disputes between the Management of Executive Director (P. & A.) SAIL, Rourkela Steel Plant, Rourkela and its Workman Shri Gopal Chandra Mishra, represented through the General Secretary, Rourkela Mazdoor Sabha, at Bisra Road, Rourkela was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 18 OF 2004

Dated the 24th August 2006

Present :

Shri S. K. Behera, M.A., LL.B.
Presiding Officer, Industrial Tribunal,
Rourkela.

Between :

The Executive Director (P. & A.),
SAIL, Rourkela Steel Plant,
Rourkela. . . First Party—Management

And

Shri Gopal Chandra Mishra,
C/o The General Secretary,
Rourkela Mazdoor Sabha,
At Bisra Road, Rourkela. . . Second Party—Workman

Appearances :

For the First Party—Management . . . Shri J. Das, A.C.L.O.
Shri D. P. Mishra, A.L.O.

For the Second Party—Workman . . . Shri B. B. Sahu, G. S.

AWARD

The Government of Orissa in the Labour & Employment Department vide their Order No. 9622—II-I(SS)-22/2004-LE., dated the 28th October 2004 in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication by this Tribunal :

“Whether the termination of services of Shri Gopal Chandra Mishra, Pl. No. 25116, Ex-Sr. Design Assistant with effect from the 16th December 2002 is legal and/or justified ? If not, to what relief Shri Mishra is entitled ?”

2. The second party workman Shri G. C. Mishra, Ex-Senior Design Assistant, Design Department of R.S.P. (hereinafter referred to as workman) had raised an industrial dispute through the union giving rise to the present proceeding for adjudication in terms of the reference as quoted above.

3. Written statement of claim as submitted at the instance of the workman reveals that he has been illegally dismissed from service by the management of Rourkela Steel Plant (hereinafter referred to first party management) in clear violation of the procedure and rule. The workman while working as Senior Design Assistant was convicted and sentenced vide judgement and order, dated the 10th October 2002 of the Additional Chief Judicial Magistrate-*cum*-Special Chief Judicial Magistrate (C.B.I.), Bhubaneswar in S.P.E. Case Nos. 35 of 1987 and 35 of 1989 for his committing offences under Sections 408, 467, 468 and 477-A of I.P.C.

4. The first party management based on such conviction, resorted to his dismissal from service vide order, dated the 16th December 2002 as a result of which the second party workman was dismissed from service. The dismissal has been challenged as illegal.

5. The first party management in their written statement *inter alia* have stated that consequent upon conviction of the workman by the Hon'ble Court of Additional C. J. M.-*cum*-Special C. J. M. (C.B.I.), Bhubaneswar and sentenced to undergo imprisonment and pay fine vide judgement, dated the 10th October 2002, the first party management in accordance with Certified Standing Order No. 31(1) proceeded against the second party workman and passed order of his dismissal from service on the 16th December 2002. As per the Certified Standing Orders of the management while an employee is convicted and sentenced in a criminal case for committing offence involving moral turpitude, he is to be removed/dismissed from service and in such case a departmental proceeding like conducting enquiry etc. are not required. Based on the judgement of criminal court, the action of dismissal was made. However, if the employee is acquitted in appeal by a higher court, his reinstatement is considered by the management. Accordingly, when the workman was acquitted in appeal by appellate court and on his request he has been reinstated into service with a direction to join

but the second party workman failed to comply such order. According to the management after dismissal of the workman, on his request, all his dues in the form of final settlement has been paid to him including payment towards P. F. and Gratuity. Therefore at the time of reinstatement the management directed to deposit back the entire amount so that it could be paid on his attaining the age of superannuation.

6. Basing on the pleadings of the parties, the following issues have been framed :

- (i) Whether the reference is maintainable ?
- (ii) Whether the termination of service of Shri Gopal Chandra Mishra, Pl. No. 25116, Ex-Sr. Design Assistant with effect from the 16th December 2002 is legal and/or justified ?
- (iii) If not, what relief Shri Mishra is entitled ?

7. The workman has examined himself as W. W. 1 and exhibited several documents. On the other hand the management did not examine any witness, but have exhibited documents which are on record to treat an evidence on behalf of the management.

8. *Issue No. (i)*—A reference has been made by the Government of the dispute to this Tribunal for adjudication. The Government is empowered under Section 12(5), read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, I do not find any infirmity in the reference which cannot be adjudicated by this Tribunal. Further the parties have not led any evidence questioning the maintainability of the reference. Accordingly I hold Issue No. (i) as maintainable and answered in positive by holding that this Tribunal has jurisdiction to entertain the reference made by the Government and the reference is maintainable.

9. *Issue No. (ii)*—Admittedly the second party workman was an employee of the first party management who was working as Senior Design Assistant. From the facts on record it appears that he was a workman under the first party management. It appears from the facts on record that C.B.I. filed a charge-sheet against the second party workman for the offences under Sections 408, 467, 468, 477-A, I.P.C. C.B.I. filed charge-sheet before the Additional C.J.M.-cum-Special Judge C.J.M. (C.B.I.), Bhubaneswar. The Additional C.J.M.-cum-Special Judge C.J.M. (C.B.I.), Bhubaneswar found the second party guilty under all the aforesaid sections and convicted him to undergo rigorous imprisonment for 3 years and also imposed a fine up to Rs. 5,000.

10. The S.P., C.B.I. forwarded a copy of the order of judgement of conviction to the first party management. Finding this the authority of the first party management dismissed the second party from his service. The dismissal order was made as per Certified Standing Orders of the company i.e. Rourkela Steel Plant, Rourkela. Under Clause 31(1) of Standing Order which reads as follows :

Where a workman has been convicted for a criminal offence involving moral torpitude in a Court of Law, the workman may be removed or dismissed from service without following the procedure laid down in Standing Order No. 30.

It appears to me that first party dismissed the second party workman from his service as he was convicted in a criminal offence involving moral torpitude in a Court of Law.

11. What I find the termination of the second party soon after his conviction has been done in accordance with the Standing Orders of the company.

12. Now, the question is whether the second party was convicted in a criminal case involving moral turpitude or not, I hold this offences fully within the purview of moral turpitude. As the basic indicia of moral turpitude are something contrary to justice, honesty or good morals involving baseness of mind or attitude; and which shocks the moral conscience of society in general.

13. In this regard reliance being placed on a decision of Hon'ble Supreme Court reported in 1997-I-L.L.J. at page 854 (Allahabad Bank Vrs. Deepak Kumar Bhola).

14. Considering the crime committed by the second party, the management is right in dismissing the second party from his service without following the procedure laid down in Standing Order No. 30 of Rourkela Steel Plant, Rourkela. I absolutely find no infirmity in the action of the management in passing the order, dated the 16th December 2002. As per the said order, the second party workman was dismissed from service. In this regard reliance may be placed in a decision of the Hon'ble Apex Court reported in 2005-L.L.R. at page 1137 (Ajit Kumar Nag Vrs. General Manager (P.J.), Indian Oil Corporation Limited, Haldia and others. Taking into consideration the above facts in mind, I hold the termination of service of the second party is legal and justified.

15. *Issue No. (iii)*—Soon after the order of conviction was passed, the second party workman filed an appeal and the appellate court acquitted the second party from the aforesaid charges. The order of acquittal was passed on the 23rd March 2006. Soon after acquittal, the first party did not reinstate the second party workman. However, I find from the facts on record that the first party management soon after the order of dismissal paid the following amount to the second party workman :

| | | | |
|----------------------|----|-----|--------------------|
| Provident Fund | .. | Rs. | 3,01,343.00 |
| Gratuity | .. | Rs. | 3,27,744.00 |
| One month notice pay | .. | Rs. | 15,574.00 |
| SESBF | .. | Rs. | 63,881.00 |
| Total | .. | Rs. | <u>7,08,542.00</u> |

One month notice pay was given as per Section 33-2(b) of the Industrial Disputes Act. This amount was deposited in the account of the second party workman because of filing of the present case to comply the provisions of the Industrial Disputes Act.

16. As per the workman was acquitted, it was the duty of the first party to re-employ the second party workman. In this regard, I may mention here that the first party in the midst of the trial directed the second party workman to join in his post imposing condition as per Ext. 3 wherein the management asked the second party workman to deposit Rs. 7,08,542 with 9% interest in Cash Section, F. & A. Department. The order of reinstatement issued by the first party management appears to be legal and judgement. But the condition of refunding back the money is not at all desirable. As the workman was out of employment for a considerable

period and the amount what he received towards his final settlement from the management must have been spent by him for maintaining himself and his family. Therefore, I think it will be difficult for him to deposit back the amount as directed to do so at this stage. For all fairness of the case, I directed the management to allow him to join in duty and to set up the amount so paid already at the time of his final settlement when he was reached the age of superannuation.

17. Now, relating to the question of payment of back wages, I hold that the second party workman is not entitled to get back wages/salary before the order of acquittal was passed, as he has done so work. In this regard, reliance may be placed in a decision of the Hon'ble Apex Court reported in 2004-L.L.R.-1 (Union of India Vrs. Jaipal Singh). In the decision, their Lordship in the similar case have opined as follows :

If as a citizen the employee or a public servant got involved in a criminal case and in after initial conviction by the trial court, he gets acquittal on appeal, subsequently the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon for the appellants are not only convincing but are in consonance with reasonableness as well though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court in our view committed a grave error in allowing back wages also without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

18. Taking into the spirit of the decision as well as the facts of the case, I hold that the decision is applicable to the present case and the second party will be entitled to back wages from the date of acquittal and he will get his salary with effect from the 23rd March 2006, i.e. from the date of acquittal order.

19. In the premises, considering all facts on record I hold that the termination of the services of second party workman Shri G. C. Mishra, Ex. Sr. Design Assistant, Pl. No. 25116 with effect from the 16th December 2002 is legal and justified. Since the management has issued the order of reinstatement he may be allowed to join in his duty forthwith without any deposit on the condition that the amount that he had received will be set up against his dues payable on attaining the age of superannuation. As indicated above, I may make it clear that he will not be entitled to any service benefits and back wages for the period he remained out of employment from the 16th December 2002 to the 22nd March 2006. Since the second party has already been issued with appointment order by the first party management in the meanwhile by the order, dated the 11th July 2006, the second party workman be allowed to join in his duty without depositing any amount as directed in view of my aforesaid direction.

20. I further hold that after joining the first party is directed to deduct all statutory dues like Income Tax, Provident Fund etc. from the salary of the second party. The amount already received by the second party workman is hereby set up and shall be adjusted along with final settlement would be made after his superannuation.

The award is answered accordingly. The absence period indicated above be treated as duty.

Dictated and corrected by me.

S. K. BEHERA
24-8-2006
Presiding Officer
Industrial Tribunal
Rourkela

S. K. BEHERA
24-8-2006
Presiding Officer
Industrial Tribunal
Rourkela

By order of the Governor
N. C. RAY
Under-Secretary to Government